

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Pat Shortridge,

Complainant,

vs.

DLCC and the DFL
Party of Minnesota,

Respondent.

**NOTICES OF DETERMINATION OF
PRIMA FACIE VIOLATION AND ORDER
FOR PROBABLE CAUSE HEARING
AND ORDER OF DISMISSAL**

TO: Pat Shortridge; the Democratic Legislative Campaign Committee; and the DFL Party of Minnesota.

On November 5, 2012 Pat Shortridge ("Complainant") filed a Campaign Complaint with the Office of Administrative Hearings alleging that the Democratic Legislative Campaign Committee ("DLCC") and the DFL Party of Minnesota ("DFL Party") (collectively "Respondents") violated provisions of Minn. Stat. ch. 10A¹ and Minn. Stat. §§ 211A.13 and 211A.15. The Complaint alleged that the DLCC made contributions to the Minnesota DFL Party ("DFL Party") that consisted, in part, of contributions that had previously been made to the DLCC by corporations.

After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Office of Administrative Hearings lacks jurisdiction over any alleged violations of Minn. Stat. ch. 10A, but that the Complaint does set forth a *prima facie* violation of Minn. Stat. § 211B.15. The Administrative Law Judge further determines that the Complaint does not state a *prima facie* violation of Minn. Stat. Ch. 211B against the DFL Party and must be dismissed.

THEREFORE, IT IS ORDERED AND NOTICE IS GIVEN

(1) That the claims filed by Pat Shortridge against the DLCC and the DFL Party alleging violations of Minn. Stat. Ch. 10A are **DISMISSED** for lack of jurisdiction;

(2) The Claims filed by Pat Shortridge against the DFL Party alleging violations of Minn. Stat. §§ 211B.13 and 211B.15 are **DISMISSED**; and

(3) That this matter hereby is scheduled for a probable cause hearing on the alleged violations of Minn. Stat. § 211B.15, to be held by telephone before the undersigned Administrative Law Judge at **10:00 a.m. on Tuesday, November 13, 2012**. The hearing will be held by call-in telephone conference. You must call:

¹ Unless otherwise specified, all references to Minnesota Statutes are to the 2012 edition.

1-888-742-5095 at that time. When the system asks for your numeric pass code, enter **685-684-1864#** on your phone and you will be connected to the conference. The probable cause hearing will be conducted pursuant to Minn. Stat. § 211B.34. Information about the probable cause proceedings and copies of state statutes may be found online at www.oah.state.mn.us and www.revisor.leg.state.mn.us.

At the probable cause hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if that choice is not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should provide to the Administrative Law Judge all evidence bearing on the case, with copies to the opposing party, before the telephone conference takes place. Documents may be emailed to Judge Johnson at Bruce.Johnson@state.mn.us or faxed to 651-361-7936.

At the conclusion of the probable cause hearing, the Administrative Law Judge will either: (1) dismiss the complaint based on a determination that the complaint is frivolous, or that there is no probable cause to believe that the violation of law alleged in the complaint has occurred; or (2) determine that there is probable cause to believe that the violations of law alleged in the complaint have occurred and refer the case to the Chief Administrative Law Judge for the scheduling of an evidentiary hearing. Evidentiary hearings are conducted pursuant to Minn. Stat. § 211B.35. If the Administrative Law Judge dismisses the complaint, the complainant has the right to seek reconsideration of the decision on the record by the Chief Administrative Law Judge pursuant to Minn. Stat. § 211B.34, subd. 3.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at P.O. Box 64620, St. Paul, MN 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TDD).

Dated: November 8, 2012

s/Bruce H. Johnson
BRUCE H. JOHNSON
Administrative Law Judge

MEMORANDUM

Pat Shortridge (“Complainant”) is a resident of St. Paul. The DLCC is a “political organization,” within the meaning of 26 U.S.C. § 527, with offices in Washington, D.C. The DFL Party is also a political organization with offices in St. Paul. The Complaint alleges that the DLCC is registered with the Secretary of the Treasury pursuant to 26 U.S.C. § 527 and receives contributions from various corporations and labor unions. Because of the DLCC’s status under the Internal Revenue Code, any funds it receives are exempt from taxation if those funds are further contributed to (1) another “political organization”; (2) a “private foundation” within the meaning of 26 U.S.C. § 509; or (3) are deposited in the general funds of the federal, state, and local government.

The Complaint further alleges that the DLCC has thereafter contributed some of the funds it has received from corporations and labor unions to the DFL Party in violation of Minn. Stat. Ch. 10A and Minn. Stat. §§ 211B.13 and 211B.15. First, the Office of Administrative Hearings (“OAH”) has no jurisdiction to determine whether or not violations of 26 U.S.C. § 527 or any other federal law may have occurred. Second, the jurisdiction of Office of Administrative Hearings (“OAH”) is limited to matters that the Legislature has specifically designated in a statute. Minn. Stat. § 211B.32, subd. 1, only gives the OAH jurisdiction to adjudicate alleged violations of Minn. Stat. ch. 211A or 211B. It does not give OAH jurisdiction to hear and adjudicate claims arising under any other chapters of Minnesota Statutes, including Minn. Stat. ch. 10A. The OAH therefore lacks jurisdiction over any such claims that may have been raised in the Complaint.

Minn. Stat. § 211B.15, subd. 2, provides in relevant part:

A corporation may not make a contribution or offer or agree to make a contribution directly or indirectly, of any money, property, free service of its officers, employees, or members, or thing of monetary value to a major political party, organization, committee, or individual to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office.

The Complaint, in substance, alleges that the DLCC made contributions to the DFL Party. The Complaint is unclear about whether the DLCC is a corporation. It merely indicates that the DLCC is a “political organization,” within the meaning of 26 U.S.C. § 527. However, that federal statute defines “political organization” as²

The term “political organization” means a party, committee, association, fund, or other organization (*whether or not incorporated*) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.²
[Emphasis supplied.]

² 26 U.S.C § 527 (e)(1). Unless otherwise specified, all references to the United States Code are to the 2012 edition.

Thus, the allegations in the Complaint do not clearly establish whether or not the DLCC is itself a corporation which would be prohibited from making contributions to the DFL Party in violation of Minn. Stat. § 211B.15, subd. 2. However, even if the DLCC is not a corporation, the Complaint also alleges that the DLCC indirectly violated Minn. Stat. § 211B.15, subd. 2, by including corporate contributions which it had previously received as part of the contributions it subsequently made to the DFL party. Put another way, the Complainant takes the position that corporate contributions made to the DLCC retained their corporate character when the DLCC subsequently made them part of the contributions it subsequently made to the DFL Party. The Complainant further asserts that the Campaign Finance and Public Disclosure Board has given an advisory opinion to that effect. In any event, whether Minn. Stat. § 211B.15, subd. 2, can, as a matter of law, be construed to prohibit “indirect corporate contributions,” such as those at issue here, has never been adjudicated, and the Complaint therefore states a *prima facie* violation of Minn. Stat. § 211B.15, subd. 2.

On the other hand, there is no discernible basis for the Complainant’s claim that the DFL Party violated Minn. Stat. ch. 211B. Again, the allegations in the Complaint do not clearly establish whether or not the DLCC is itself a corporation. However, even if it is, there are no allegations that the DFL Party made corporate contributions, either directly or indirectly, to any person or organization. The Complaint therefore fails to state a claim under Minn. Stat. § 211B.15, subd. 2, against the DFL Party.

The Complaint also fails to state a claim against the DFL Party under Minn. Stat. § 211B.13, subd. 2, which provides:

A person may not knowingly solicit, receive, or accept any money, property, or other thing of monetary value, or a promise or pledge of these that is a disbursement prohibited by this section or section 211B.15.

Minn. Stat. § 211B.13, subd. 2, prohibits soliciting, receiving, or accepting corporate contributions in violation of Minn. Stat. § 211B.15, subd. 2, but it requires that it be done *knowingly*. If the DLCC were, in fact, a corporation and the DFL Party knew that to be the case, then the Complaint could at least state a claim against the DFL Party under Minn. Stat. § 211B.13, subd. 2. But there are no allegations to that effect in the Complaint. The Complaint neither alleges nor offers evidence that the DFL Party knew that some of the contributions it received from the DLCC consisted, in part, of corporate contributions that the DLCC had previously received.

In view of the foregoing, this matter will proceed to a hearing on whether there is probable cause to believe that the DLCC violated Minn. Stat. § 211B.15, subd. 2, but the claims against the DFL Party must be dismissed.

B. H. J.